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Supreme Court, U.S.
FILED

071573 APR 8 - 2008

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NO. (1)

In The

Supreme Court of the United States

Ceola James
Petitioner

v.

The Mississippi Bar
Respondent

On Petition for a Writ of Certiorari
To the Mississippi Supreme Court

Petition for a Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether petitioner was denied equal protection and due process of the laws when Petitioner was ordered by the Mississippi Supreme Court to receive a public reprimand for appealing a removal petition while counsel for opposing party was allowed to appeal his removal petition without being given a public reprimand where court ruled that opposing counsel should have been removed.?

(2) Where the State of Mississippi adopts the ABA Rules of Professional Conduct and announces a new rule on appeal, should petitioner be punished retroactively under a new rule announced by the Mississippi Supreme Court?

TABLE OF CONTENTS

PAGE

Questions presented for Review ----------i

Table of Authorities----------1v

Opinion Below---------- 1

Statement of Jurisdiction----------1

Constitutional Provisions----------2

Statement of the Case----------3

REASONS FOR GRANTING THE WRIT------ 1,8,9,10

I. The state court of last resort has made a ruling that does not afford equal protection and due process . This decision was made in a manner that conflicts with decisions of other state courts of last resort and also with relevant decisions of this court.

2. Review is also warranted because the issue of an attorney being cited for disciplinary action for appealing for permission to represent an indigent child is a matter of broad public importance that has not been but should be

settled by this court. The denial of the right to appeal a removal petition without becoming a test case for a bar complaint has caused and will cause further **loss of faith in the judicial system. According to legal experts, Petitioner has suffered abuse as much as the child she was trying to protect.**

CONCLUSION ---------- 15

INDEX TO APPENDIX

1. COMPANION CASE ----------1a

2. Constitutional Provisions ---------- 30a

3. Judgment on Appeal ---------- 37a

4. Order ---------- 54a

5. Final Order ---------- 55a

6. Order Denying Rule 60 Motion 56a

TABLE OF AUTHORITIES

UNITED STATES CODE

(1) 18 U.S. C., Section 207 (a (1) ---------- 12
(2) 28 U.S.C. Section 1254 (1) ---------- 1

Federal Rules

Due Process Clause, U. S. Constitution ------ 1,2,16
Equal Protection Clause, U.S. Const. ---------- 2,9,16

Durham County vs. Richards and ----------12
Associates, Inc. 742 F. 2d, 81,
4th cir. 1994 ---------- 12

J.N.W. E. v, W. D. W.
2005 So. 2d (2004-CA 00166-COA) ----------,6,10

Miss. Comm. On Judicial Performance
vs. Atkinson, 654 So 2d 1339 (Miss.,
1994) ----------10,11

Schultz vs. Schultz
783 So. 2d 324
Fla. App.Ct.,2001 ---------- 11

Rules

ABA Model Rules of Prof. Conduct 1.12 ---2,11,12,15

Miss. Rules of Prof. Cond. 1.12 ----------4,11
Miss. Rules of Civil Procedure ----------1, 56a

Internet

'Letric Law Library - The Internet Library -- 2, 3,13

OPINION BELOW

This case comes up on Application for a Writ of Certiorari on a order Denying a Rule 60 Motion, Mississippi Rules of Civil Procedure, which was entered on January 11, 2008. A Final Order was entered in this case on July 28, 2005. The opinion is printed as a part of the Appendix. Other Orders are also listed in the Appendix. An Order denying the Rehearing was entered on April 5, 2005. An Order Denying the Motion to Amend or Correct the Judgment was entered on May 2, 2007.

STATEMENT OF JURISDICTION: An Order was entered in this cause on the 5th day of April, 2007 by the Mississippi Supreme Court denying the Motion for Rehearing. An Order denying the Rule 60 Motion, MRCP, was entered on January 11, 2008. Jurisdiction is invoked pursuant to 28 U.S.C., Section 1254 (1), which provides a writ of certiorari may be granted upon petition by any party to any civil or criminal case before or after judgment.

CONSTITUTIONAL PROVISIONS: The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no state shall... deny to any person within its jurisdiction the equal protection of its laws." The United States has a written commitment that the judiciary is

empowered to enforce if the states do not comply. The fourteenth Amendment guarantees all persons "equal protection of the laws," which means that a state should apply laws equally and cannot give preference to person or class of persons over another. 'Lectric Law Library. Appellant and co-counsel in the case on appeal both appealed removal petitions. Appellant, who appealed to represent an indigent child, was dismissed and cited with a bar complaint for appealing. Appellant never presided over the case she was asked to modify. Co-counsel, who represented the side with money was not dismissed or cited, even though co-counsel presided over the case he was asked to modify. Both counsels were prior chancery judges. Appellant is only asking this court to clear her name based on the law that the state of Mississippi had adopted pursuant to ABA Model Rules of Professional Conduct 1.12.

Due process is guaranteed by the Fifth Amendment to the U.S. constitution. Due process insures that a person is guaranteed both fundamental and substantive due process. Due process is an issue in this case because "substantial" interwined as adopted by the court is a subjective test that raises due process issues because the concept is too vague to give proper notice of what the court expects. Due process insures that a person is afforded fundamental justice and fairness. 'Lectric Law Library.

STATEMENT OF THE CASE. The basis for requesting an Application for a Writ of Certiorari is that the Appellant never presided over the divorce she was asked to modify. The court basically ruled that a protective order that was done in 2001 when the Petitioner was a Chancery Judge seated in Greenville Washington County, Mississippi presented issues that were "interwined" with the divorce action in Yazoo City, Mississippi. The Order for Protection From Domestic Abuse that was done in 2001 basically ordered the parties to keep their agreement that was done in 2000, and take it to their Judge in Yazoo City for a resolution on the merits. The Yazoo Chancellor dismissed the agreement as insignificant prior to the divorce and it was not a part of the divorce. The parties were fighting over the agreement in Washington County, Mississippi where the Petitioner presided. Since no other judge would take the case on the evening of November 21, 2001, prior to thanksgiving holidays, Appellant answered the call of duty and agreed to have an emergency hearing granting temporary relief.

One of the parties was later referred to the Petitioner to do a modification of the divorce decree, and the Appellant basically walked into a "hornet's nest." The former clients insisted that a cross removal petition be filed against the former attorney, Derek Parker. because their previous Attorney Shari Herring, had accused Attorney

Parker of ruling on the visitation of the minor child in question while acting as a special youth court judge, and at the same time representing the child in youth court and in chancery court concerning the matter in controversy. The prior Attorney, Shari Herring, was unable to resolve the conflict and she resigned from the case.

The Yazoo Chancellor, Judge Janace Goree, cited the Appellant with a violation of 1.12 of the Mississippi Rules of Professional Conduct, even though the Chancery Court has no jurisdiction over bar complaints. Attorney Parker admitted that "there was no law to guide him," but nevertheless the Appellant was dismissed and cited. Attorney Parker was not cited or removed by the lower court (for violation of Rule 1.12, Mississippi Rule of Professional conduct), and both parties appealed the removal petitions.

The case involving the removal petitions was assigned to the Mississippi Court of Appeals. Petitioners should have been able to appeal a removal petition without being cited for a bar complaint. The Mississippi Court of Appeals refused to reinstate the Appellant, but ruled that the lower court should have dismissed Attorney Parker from the case. Both attorneys could have represented their clients, but Attorney Parker refused discuss a waiver. He thereby eliminated himself from the case. After the appeal, both

attorneys withdrew from the case, and the petitioner had to **fight a bar complaint that was filed in 2004 during the week prior to petitioner's Supreme Court election**. Petitioner was a candidate for the Mississippi Supreme Court for a seat that had been vacated by a prior justice. The Mississippi Supreme Court had asked the Mississippi Bar to investigate the matter for a possible violation.

Petitioner did what she felt she was ethically obligated to do. Appellant filed a **Petition for Extraordinary Relief** with the Mississippi Supreme Court, basically asking for help, and telling the court that unless it intervened, the minor child would not be heard because every attorney that has attempted to help the child had suffered legal abuse. The legal abuse that the Petitioner suffered in Yazoo City, Mississippi, is too long to be enumerated. Petitioner told the court that the bar complaint was designed to "run the petitioner off," the same as the last attorney had been run off. Petitioner was worried because based on the legal abuse that petitioner had to suffer, petitioner feared that the minor child would be left "spinning in the system." The appellant wanted to insure a fair hearing on the removal petitions. The Emergency Petition for Relief was denied without comment. The Petitioner had asked the Mississippi supreme Court not to impose sanctions for appealing the removal petition. The court ordered the petitioner to receive a public.

reprimand for appealing the removal petition. In the dissenting opinion, a ninety day suspension was recommended. Petitioner had a legitimate question for appeal since petitioner never presided over the divorce. Appealing a removal petition is the proper procedure for addressing a removal. If petitioner had presided over the divorce that petitioner was asked to modify, Petitioner would have immediately withdrawn from the case.

The case **of J.N.W.E.** v. **W. D.W.** (Appendix, p. 1). is still being litigated, and the minor child is still "spinning in the legal system." Petitioner received numerous letters of support from laymen and attorneys, which included these statements:

(1) " The actions that Ms James took were not motivated by any ill motive or conscious disregard of any ethical rules of consideration but solely out of a desire to do the right thing and be of assistance to a child she felt in need of same. " Attorney David Sessums, Vicksburg.

(2) " Ms. James is a fine, caring, and capable attorney and would prefer to personally suffer than cause injury to others... I wish more could share her strong will and excellent attitude in the face of adversity." Attorney Mark Prewitt, Vicksburg.

(3) " Ceola James is..honest, hard-working ...and caring for people, and a very good attorney."" W.B. Duggins, Vicksburg.

(4) "Ceola has always been courteous, compassionate, fair, and competent in her services to the community as Chancellor of the Ninth District and in her capacity as a practicing attorney." Attorney Marcie T. Southerland, Vicksburg.

(5) "I asked you to keep in mind that as a lawyer and judge, our reputations are about all we have." G. Kenner Ellis, Attorney, Greenville.

(6) "In my opinion, she would never knowingly or intentionally act unethically or contrary to law." Marian D. Alexander, Attorney, Greenville.

(7) "Ceola James has a passion for protecting children more than any Chancellor before whom I practiced in my thirty-four (34) years." Willard Mcillwain, Jr., Attorney, Greenville.

(8) "Ceola James has helped more people than any other attorney I know...She is ethical and respects the law." Stacy D. Carter, student - Vicksburg.

(9) " Hon. Ceola James deserves respect and admiration, not public humiliation and disrespect."

Lea Donovan, former Deputy Chancery Clerk, Vicksburg.

(9) " who truly deserves this public reprimand? Would it be the opposing attorney who admitted his act...the Judge (Goree) who allowed the tortue to continue,,,for four years...or the attorney who fought to save a child from tortue...?She suffered abuse while trying to protect him, such as being called a "stupid Nigger." This she never thought twice about...all she wanted to do was save one little boy..."You should be proud to have among you an attorney who would go against these types of abuse to save one little child instead of adding more abuse and persecution on top of what she has already received." Dorothy Franklin, relative of former client.

"Giving a public reprimand to a person..who was appealing ... to clear the way to represent a child sends the wrong message to the public." Murline Lee, citizen, Vicksburg.

"The problem with her being reprimanded I believe must be a communication breakdown that needs further investigation." Robert White, Vicksburg.

REASON FOR GRANTING THE WRIT:

1. THE STATE COURT OF LAST RESORT HAS MADE A RULING THAT DOES NOT AFFORD EQUAL PROTECTION AND DUE PROCESS IN A MANNER THAT CONFLICTS WITH DECISIONS OF OTHER STATE COURTS OF LAST RESORT AND WITH RELEVANT DECISIONS OF THIS COURT.

Petitioner was denied equal protection and due process of the laws when Petitioner was ordered by the Mississippi Supreme Court to receive a public reprimand for appealing a removal petition while counsel for opposing party was allowed to appeal his removal petition without being given a public reprimand where court ruled that opposing counsel should have been removed? The Equal protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no state shall... deny to any person within its jurisdiction the equal protection of its laws" Due process is guaranteed by the Fifth Amendment to the U. S. Constitution. It insures that a person is afforded fundamental fairness. Due process is an issue in this case because the "sustantial" interwined standard adopted by the court is too vague to be constitutional because it does not give an attorney or former judge proper notice of what the court expects. Petitioner is asking the court to clear her name because her name is mostly all she has. The petitioner was forced to fight a bar complaint after she filed a removal petition. The case of **Ceola James vs The Mississippi Bar** which is on

appeal involves a bar complaint. The Mississippi Supreme Court has exclusive jurisdiction over bar complaints. The Yazoo City Chancery Judge along with the Mississippi Court of Appeals entertained the subject matter of the bar complaint even though theses courts had no jurisdiction over bar complaints. In the case of **J.N.W. E. vs. W.D.W.**, 2005 So. 2d (2004-CA-00166-COA): neither attorney was allowed to represent their clients. See Appendix. The Mississippi Court of Appeals ruled that Attorney Derek Parker should have been removed. Attorney Parker withdrew from the case after the appeal of the removal petition. Attorney Parker alleged that a custody proceeding was done in another jurisdiction by the Petitioner, when in fact custody was never mentioned in the Petition for Protection from domestic abuse. Petitioner explained to the parties that she had nothing to do with the merits of their agreement, and that they abide by their agreement and take it to their judge for any adjustment on the merits. Attorney Parker has confused the facts of the case. His version of the facts was adopted by the courts and is contrary to the evidence presented by the this had to be addressed by their judge on the merits. the parties were merely ordered to continue to abideby their agreement. In addition to being wrongfully removed in **J.N.W.E. vs. W.D.W.**, the petitioner was also cited with a bar complaint in, **Ceola James vs. The Mississippi Bar.** The way that petitioner has been treated for appealing to be able to help a

child has done much to damage the image of the legal profession and this case has sent the wrong message to the public.

2. THE ISSUE OF AN ATTORNEY BEING CITED FOR DISCIPLINARY ACTION FOR APPEALING FOR PERMISSION TO REPRESENT AN INDIGENT CHILD IS A MATTER OF BROAD PUBLIC IMPORTANCE THAT HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT. THE DENIAL OF THE RIGHT TO APPEAL A REMOVAL PETITION WITHOUT BECOMING A TEST CASE FOR A BAR COMPLAINT HAS CAUSED AND WILL FURTHER CAUSE LOSS OF FAITH IN THE JUDICIAL SYSTEM IF THE ISSUE IS NOT SETTLED BY THIS COURT.

Where the State of Mississippi adopts the ABA Rules of Professional Conduct (adopted 2/18/1987) and announces a new rule on appeal, the Petitioner should not be punished retroactively under the new rule. Mississippi adopted the ABA Model Rules of Professional Conduct. In the comments to Rule 1.12 of the ABA Model Rules of Professional Conduct, Annotated, the case of **Schultz vs, Schulth** is cited, 783 So. 2d 324 (Florida District court of Appeals, 2001) The cases used in this petition were cited as authority or persuasive authority in the courts below. This case held that there is no violation when it is not the same parties and the same subject matter. The Mississippi Rules of Professional Conduct, Rule 1.12 also require that

the same parties and the same subject matter be present. The ruling in **Ceola James vs. The Mississippi Bar** has basically nullified this decision. Also cited under the ABA Model Rule 1.12 is

Durham County v Richards and associates, Inc., 742 F. 2d 811. 4th cir., 1994. In the Schultz case, supra the court held that the trial court abused its discretion by disqualifying wife's counsel in a divorce solely because the retired partner in counsel's firm was appointed arbitrator in shareholder suit against husband and his company, different matters involved). Rule 1.12 MRPC requires that an attorney shall not represent a party in a case where the attorney, as a former judge, participated **personally** and **substantially**. In the comments to the ABA Model Rules of Professional conduct, Annotated, it is stated that personal and substantial refers to any participation on the merits. as is set forth in 18 U.S.C., Section 207 (a) (1). there is no violation when it is not the same parties and the same subject matter. The same subject matter really means the same set of facts and the same case. The agreement that was the subject of the temporary order for protection from domestic abuse had nothing to do with the divorce that the petitioner was asked to modify. The abuse that was the subject of the modification arose in the youth court where Attorney Parker

presided and it was the underlying cause of the modification. The abuse that was the subject of the parties' agreement was two years old when the parties were fighting over their agreement in Washington county. It never had anything to do with the divorce. The temporary order was to preserve the peace in Washington county. A close observation of the facts and the record in the case will show that Attorney Parker presided over the same parties and subject as judge and lawyer and at the same time caused a complaint to be filed against the petitioner when in fact he was the party committing the acts as it was alleged by the previous attorney. Petitioner has no interest in Attorney Parker's case, but petitioner merely wants to clear her name. Petitioner's name is all she has.

Jurisdiction is the power of a court to hear a case. The geographical area within the judge's district is called territorial jurisdiction. Jurisdiction in some cases is exclusive as opposed to being concurrent or assistant. "Jurisdiction" 'lectric Law Library of Legal Terms. The Internet Library.It is undisputed that the Yazoo chancellor, Goree, had exclusive jurisdiction over the divorce. The petitioner had no jurisdiction over the divorce. Petitioner was in another territorial jurisdiction. The record below shows that the petitioner made a ruling to preserve the peace in another district until the litigants could be heard by their judge. The hearing on the merits of their dispute was a

different matter. Even if had been the same subject matted, it was a collateral ruling to preserve the peace and not an order affecting the merits, Since petitioner had no jurisdiction over the divorce, petitioner had no power to do anything affecting the merits of the divorce.

The Mississippi Supreme Court cited **Mississippi Commission on Judicial Performance** vs. **Atkinson**, 654 So. 2d. 1334 (Miss, 1994) in ordering a public reprimand for the petitioner. In the Atkinson case, the Judge set a bond and later went back to lower the same bond. Attorney Atkinson was given a public reprimand. Attorney Atkinson entered an order that affected the merits of the case, even thought it was an agreed order. This case is distinguished from the petitioner's case in that the petitioner had no power to do anything to affect the merits of the divorce she was asked to modify.

LOWER COURT'S JUDICIAL NOTICE OF THE PARTIES:

The lower court had the following judicial notice of the parties which may aid this court in understanding the nature of this case. Petitioner is african american, and does much work to represent the poor. Petitioner did not charge the former clients for the appeal of the removal petition. The former client had lost two houses trying to pay attorneys. Attorney Derek Parker is

White and W.D.W. is white with money. Petitioner's former client, J.N.W.E. is white and visibly poor. Judge Janace Goree is african american. The petitioner told the lower court that this case was really about **rich vs poor**, a poor child spinning in the legal system trying to be heard. The child is still spinning trying to be heard.

LOWER COURT'S NOTICE OF CONSTITUTIONAL PROVISIONS:

In the lower court, petitoner asked the court reconsider its ruling because of the due process and equal protection issues that the ruling had caused. Petitioner reminded the court that the substantial participation test as announced by A.B.A. Rule 1.12 is an objective standard, but the interwined test as announced by the Mississippi Supreme court is too vague to be constitutional. Interwined is whatever the judge says it is. In the Mississippi Supreme Court, the bar complaint was tried *de novo. There was no response to the issue.*

CONCLUSION:

Petitioner prays that this **court will grant the application or request for a Writ of Certiorari.** Petitioner has worked long, hard, and diligently for her reputation, her city, county, and the state of

Mississippi. Petitioner would like to be afforded due process and equal protection by the state of Mississippi, and petitioner would like to be able to enjoy the benefits as well as the burdens of the profession, and of the legal work that petitioner does, which includes representing the poor, and running in elections without political reprisals by various political groups..

Petitioner also requests that the **record of the lower court will be reversed and that petitioner's record will be expunged.**

Respectfully submitted,

/S/_____

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COMPANION CASE TO CASE ON APPEAL

2005 So.2d (2004-CA-00166-COA); J.N.W.E. V. W.D.W.;

J.N.W.E. APPELLANT v. W.D.W. APPELLEE

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2004-CA-00166-COA

DATE OF JUDGEMENT: 4/8/2004
TRIAL JUDGE: HON. JANACE H. GOREE
COURT FROM WHICH APPEALED: YAZOO COUNTY CHANCERY COURT

ATTORNEYS FOR APPELLANT:
CEOLA JAMES

ATTORNEYS FOR APPELLEE:
DEREK E. PARKER

NATURE OF THE CASE: CIVIL – DOMESTIC RELATIONS
TRIAL COURT DISPOSITION: DISMISSED MOTION TO MODIFY CUSTODY
DISPOSITION: AFFIRMED – July 26, 2005

MOTION FOR REHEARING FILED: MANDATE ISSUED:
EN BANC.
GRIFFIS, J., FOR THE COURT:

PROCEDURAL HISTORY AND FACTS

¶. On February 21, 2003, J.N.W.E. filed a motion for modification of child custody and other relief with the Yazoo County Chancery Court seeking modification from a previously entered divorce decree in which W.D.W. was granted custody of the parties'minor son.(fn1) On November 10, 2003, J.N.W.E. substituted Ceola James as her attorney of record in place Shari K. Herring. On November 24, 2003, W.D.W. filed a motion to remove Ceola James as J.N.W.E.'s counsel, alleging that James, while serving as chancellor for Washington County, heard and decided a civil action involving the parties regarding the modification of child custody.

¶. On December 15, 2003, the chancellor signed an order disqualifying James as counsel for J.N.W.E. due to James' prior involvement as chancellor in this case. On December 22, 2003, J.N.W.E. filed motions seeking the recusal of the chancellor and the removal of Derek Parker as counsel for W.D.W. J.N.W.E. also filed a motion to vacate the December 15, 2003 order which disqualified James as her attorney. On March 22, 2004, nunc pro tunc, March 18, 2004, the chancery court denied the motion to vacate the order disqualifying J.N.W.E.'s counsel. On March 22, 2004, the chancery court refused to set aside its order disqualifying James, finding that James had violated Rule 1.12 of the Rules of Professional

Conduct because James, as chancellor , substantially participated in litigation involving the parties for the same issues for which James was representing J.N.W.E.

¶. Aggrieved, J.N.W.E. now appeals, asserting that the chancellor erred in not granting the recusal motion and in disqualifying her attorney from participating in this matter while refusing to disqualify Appelee's attorney. J.N.W.E. also argues that the chancellor abused her discretionary power in various ways.

STANDARD OR REVIEW

¶. "[F]indings of a chancellor will not be disturbed when supported by substantial evidence unless the chancellor abused his discretion, applied an erroneous legal standard, was manifestly wrong, or was clearly erroneous." *Hamilton v. Hopkins*, 834 So.2d 695 (¶12)(Miss. 2003).

ANALYSIS AND DISCUSSION

(1) Motion for Recusal

¶. J.N.W.E. argues that the chancellor's impartially was drawn into question and that the record reflects a manifest abuse of discretion. J.N.W.E. maintains that the chancellor evidenced

prejudice against her in comments that the chancellor allegedly made that are not reflected in the record before us. J.N.W.E. suggests that we order the tape duplicated for our review. We decline J.N.W.E.'s suggestion inasmuch as the appellant is required to provide us with a record that is adequate to support his issues. *Burney v. State*, 515 So.2d 1154, 1160 (Miss. 1987). We are not able to locate anything in the record suggesting that counsel attempted to acquire a copy of the stenographer's tapes and have them made a part of the record on appeal.

¶. In Mississippi, "a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality." *Rutland v. Pridgen*, 493 So.2d 952, 954 (Miss. 1986). After a careful review of the record, we find nothing that would lead a reasonable person to believe that the chancellor had any bias or prejudice towards any of the parties or their attorneys. The Mississippi Code of 1972 as amended and the Mississippi Constitution also contain standards for which a judge may be disqualified.

¶. The Mississippi Constitution provides:

No judge of any court shall preside on the trial of any of them, shall be connected with him by affinity or consanguinity, or where he may be interested in the same, except by the consent of the judge and of the parties....

Miss. Const. art. 6, § 165 (1890).

¶. The Mississippi Code of 1972 as amended provides:

> The judge of a court shall not preside on the trial of any cause where the parties, or either of them, shall be connected with him by affinity or consanguinity, or where he may be interested in the same, or wherein he may have been of counsel, except by consent of the judge and of the parties.

Miss. Code. Section 9-1-11 (Rev. 2002).

¶. We find that the chancellor in the case sub judice is not disqualified under Section 165 of the Mississippi Constitution or under section 9-1-11 of the Mississippi Code. "When a judge is not disqualified under § 165 of the Mississippi Constitution for Section 9-1-11, the propriety of his or her sitting is a question to review only in case of manifest abuse of discretion." *Rutland v. Pridgen*, 493 So.2d 952 (Miss. 1986). We find no manifest abuse of discretion in the chancellor's denial of the motion for recusal.

(2) Disqualification of the Appellant',s Attorney

¶. On or about November 21, 2001, James, while serving as a chancellor in Washington County, signed a temporary order that stayed the

visitation rights of W.D.W. with the parties' son, pending a final hearing. On February 23, 2002, a judgment was signed by James extending the November 21, 2001 temporary order that prohibited unsupervised visitation by W.D.W. with his minor son pending further order of the Chancery Court of Yazoo County, Mississippi.

¶. The comment to Rule 1.12 states:

> The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits.

Miss. R. Prof. Conduct 1.12, cmt.

¶. The record reflects that as chancellor, James entered three orders in a case brought in the Chancery Court of Washington County, styled "J.N.W. v. W.D.W." The first order, entered on November 21, 2001, stayed unsupervised visitation by W.D.W. with the parties' minor child until the

matter could be heard on its merits. A supplemental order was entered on November 28, 2001, setting the matter for trial on December 14, 2001. The third final order was entered on January 23, 2002. This order extended the temporary order of November 21, 2001, "pending further order of the Chancery Court of Yazoo County, Mississippi." The basis for the ban on unsupervised visitation was an allegation that W.D.W. had sexually abused the minor child.

¶. These orders were entered after W.D.W. filed a complaint for divorce in the Yazoo County Chancery Court but prior to the parties' being divorced on June 20, 2002. The judgment of divorce granted custody of the parties' minor child to W.D.W.(fn2)

¶. The present litigation underlying the recusal motion and the motion and counter motion to disqualify the parties' respective counsel revolves out of a pleading filed on January 9, 2004, by J.N.W.E. entitled "Amended Motion for an Emergency Hearing for Temporary Placing of Custody by DHS Pending a Hearing of Modification of Custody." This document states, inter alia, that"[b]ecause of allegations of abuse [the minor child] has been placed in the custody of the Yazoo County Department of Human Services since February 24, 2003."

¶. It is unclear from the record whether the reference to the allegations of abuse referenced in J.N.W.E.'s January 9, 2004 pleading refers to the allegations of abuse first made in November 2001. However, it is reasonably clear that the allegations refer to abuse by W.D.W. against the parties' minor child.

¶. Based on these facts, we find that James' participation in the litigation between the parties, as a chancellor, was substantial and thus she was properly disqualified under Rule 1.12 of the Rules of Professional Conduct from representing J.N.W.E. in her ongoing battle with W.D.W. over the custody of the parties' minor child. Therefore, we affirm the chancellor's decision disqualifying James as J.N.W.E.'s attorney.

(3) Disqualification of the Appellee's Attorney

¶. J.N.W.E. argues that Derek Parker, attorney for W.D.W., should have been disqualified from representing W.D.W. because Parker served as a youth court judge during the time in which the alleged abuse of parties' minor child was before the youth court. J.N.W.E. maintains that because Parker worked as a youth court judge, Parker had access to the parties' records in youth court and that this access put Parker in a more favorable position. J.N.W.E. maintains that the chancellor's refusal to remove Parker was an abuse of

discretion inasmuch as the chancellor chose to remove her attorney.

¶. After listening to the evidence, the chancellor found that there was no evidence presented that Parker ever acted as a judge in the case. The evidence considered by the chancellor included the testimony of Parker and two other witnesses, Charlotte Langley and Patricia Nelson, a supervisor with the Department of Human Services. We discuss Parker's testimony first.(fn3)

¶. Parker testified as follows:

Q. You're a referee, right?

A. I have been appointed special youth court judge on two occasions, I believe, by order of Judge Thomas over the past four or five years.

Q. Okay. While you was Mr. W.D.W. attorney [sic], have you sat on the bench for Judge Thomas at any time?

A. I think so, yes. Okay. So you have access to my son's records to look at if you wanted to?

A. Yes, as would anyone else who was involved in that case. Youth court records are

confidential, but not as to the parties or attorneys who are actually involved in that case.

Q. so you really had access to all of the files about Judge Thomas' custody and abuse and stuff?

A. The only files I have access to are the ones in which I am participating as an attorney.

Q. So you was on the bench for Judge Thomas while you were was W.D.W's attorney? attorney?

A. You've already asked that and I answered yes.

****

THE COURT: Mr. Parker, while you were serving for Judge Thomas, did you have occasion to hear anything as it related to W.D.W.'s case?

THE WITNESS: I do not believe so, Your Honor. I would not knowingly have heard anything regarding this case. I was actively representing Mr. W.D.W. in youth court before Judge Thomas in this matter.

THE COURT: But not sitting as judge in this matter?

THE WITNESS: No. No.

Charlotte Langley gave the following pertinent testimony:

Q. What do you know?

A. I was present back in May when you [J.N.W.E.] approached the DHS worker, Patricia Nelson, to ask for a visit with your son...for Mother's Day. She picked up the phone. She made the call, because she said Hudson Thomas was on vacation. She made the call. She got off the phone and she relayed to us that ...

MR. PARKER: Object as to hearsay, Your Honor.

* * * *

Q. Were you present in the room at the time of the phone call?

A. I was there during the phone call as she was relaying back and forth with Mr. Parker.

¶. Patricia Nelson's testified as follows under direct examination by J.N.W.E.:

Q. Ms. Nelson, do you have knowledge of Derek Parker being on the bench for Judge Thomas while he's out?

A. Yes.

Q. Do you know how many times?

A. No, I don't know how many times?

Q. Do you recall a phone call you made to Derek Parker asking for visitations for Mother's Day?

A. I really don't. I try [sic] to find proof that I called him. Obviously, if I did, I did not write it down. I just know that whenever Judge Thomas is out, usually Mr. Parker is the person that we call to ask questions about it, But I just don't really remember that.

¶. On cross-examination conducted by W.D.W., Nelson gave this testimony:

Q. Ms. Nelson, you have been involved in this case involving [the minor child] is that right?

A. That's right.

Q. You've been through your file, I take it.

A. Yes sir. I'm the person that approves all investigations that come through.

Q. Did you find any evidence in your file that I had ever done anything in the matter [involving the minor child] in a judicial capacity?

A. Well, to be honest with you, Mr. Parker, I didn't have but about five minutes notice, because I was coming in from Belzoni at the time. I tried to find something. I didn't see anything.

Q. Do you have any recollection of my doing so?

A. So much has happened in this case, I really don't know. I wish I could come up with the dates and times. The only thing could come up with is what we have documented, but I am not the worker for the case. I am the supervisor for the case.

MR. PARKER: I don't have anything else, Your Honor. Thank you.

THE COURT: So, Ms. Nelson, you have no recollection of having called Mr. Parker as the judge in this matter? I know he's been the attorney in this case.

THE WITNESS: I wouldn't call him as the attorney. The only thing I would call him would have to be in the capacity as sitting in for Judge Thomas. We don't call attorneys and talk to attorneys. So the only way I would have called him would have been in judge capacity [sic]. I couldn't find anything. You know, they said I did, and I tried to remember. It seems like I did. I don't know. I make so many phone calls [sic]. I really don't know.

¶Were we sitting as the trier of fact, we may have made a different finding on the question of whether Parker had had any involvement in this case while sitting as a judge, and consequently we may have reached a different conclusion as to his disqualifications. However, since we are obligated to give deference to findings of fact made by the trial judge, we feel compelled to affirm the chancellor's decision not to disqualify Parker on the basis of prior judicial involvement in the case, (4) Abuse of discretionary power.

¶Under this issue, J.N.W.E. argues that the Chancellor abuse her discretion (1) in refusing to consolidate the two motions for removal of the parties' respective counsel, (2) in given her only ten days to hire an attorney before dismissing her case with prejudice, and (3) in dismissing her attorney and not also dismissing Wood's attorney even though Wood's attorney was privileged as a judge

to all of the confidential information in the youth court files regarding the abuse issue.

¶The consolidation to the two motions would have certainly conserved judicial resources. Nevertheless, we do not find that the chancellor abused her discretionary power.

¶The dissent contends that this case should be reversed and remanded for further proceedings. The dissent concludes that dismissing J.N.W.E.'s motion for modification and returning custody of the minor child to the custodial father, without determining if there was any merit to the abuse allegations, was not the proper solution to address the delay occasioned by J.N.W.E.'s lack of diligence in pursuing this matter. Certainly, our preference would be that any sexual abuse charges be heard and resolved. However, we look at the appellant's argument and do not see this as an issue to be considered on appeal.

¶In her brief, the appellant argues:

4. Did the judge of the lower court abuse her discretionary power?

Appellant believes that the judge of the lower court abused her discretionary power in the following manner: (1) The lower court refused to consolidate the two Petitions for Removal.

Appellant's attorney was dismissed and the appellant was required to conduct her own hearing. Appellant believed that the Chancellor further abused her discretion when the Appellant was only given ten (10) days to hire an Attorney after which the Appellant's case was dismissed with prejudice. Abuse of the judge's discretionary power was also shown when the Appellant's attorney was dismissed and the Appellee's attorney was not dismissed even though he was privileged as a judge to all of the confidential information in youth court. A judge is presumed to be qualified and unbiased in the administration of his duties. In order to overcome the presumption, the proponent of recusal must present evidence that produces a "reasonable doubt" about the judge's impartiality. *Turner v. State*, 573 So. 2d 657 (Miss. 1990); *Rutland v. Pridgen*, 43 So. 2d 952 (Miss. 1966). The record in this case shows more than a reasonable doubt about the judge's impartiality.

This is the entire argument. There is simply no legal argument on any issue other than the disqualification of the attorneys or recusal of the chancellor. The appellant does not argue that the chancellor abused her discretion in dismissing the case.

¶.The appellant cited two cases. First, the *Turner* case dealt with a question of whether formerChief Justice Ed Pittman should berecused because he was a former Mississippi Attorney

General. *Turner*, 573 So. 2d at 676-79. The court rejected the appellant's agrument. Id. at 678. Second, the appellant incorrectly cited *Rutland v. Pridgen*, 43 So. 2d 952 (Miss. 1966) The correct ite is *Rutland v. Pridgen*, 493 S. 2d 952 (Miss. 1896). In Rutland, the issue was whether the judge should have recused himself due to the previous representation of a party. ID. at 953-54. Neither *Turner* nor *Rutland* support the issue relied on by the majority.

¶At the oral argument, our presiding judge gave counsel the following admonition:

In looking at the brief, I notice that there were some reference to some allegations of child abuse in this case. That matter is not before the court today. the only thing that is before the court today is the question of the recusal of the chancellor and the dismisssal of the attorneys. So I would caution counsel to limit arguments to these points.

Ms. James, arguing for the appellant, then stated, "that is correct Your Honor. I don't believe that the subject of abuse has ever been before the chancellor. I believe that has been before the other court." Hence, we reject the dissent's conclusion that this court should reverse and remand for the chancellor to determine the substance of the modification motion, i.e. whether

there was any abuse, which was not before the court.

¶*In Varvaris v. Perreault*, 813 So. 2d. 750, 753 (¶6) (Miss. Ct. App. 2001), we held that where the appellant fails to present any legal authority to support his appeal or the issues of his appeal, if one can decipher exactly what issues if any are presented. Therefore, this Court finds that the issue is waived not only for the failure to cite authority, but the failure to address the issue.. The law is well established in Mississippi that this Court is not required to address any issue that is not supported by reasons and authority. *Hoops v. State*, 681 So. 2d 521, 526 (Miss. 1996) (citing *Pate v. State, 419 So 2d.1324, 1325-26) Miss. 1982).*
In Mitchell v. state, 2005, (¶22)(Miss. Ct. App. 2005) we held:

We have held on numerous occasions that an appellant has a duty to make mere assertions, and should set forth reasons and cite authority in support of his arguments. *Clark v, State*, 503 So. 2d 277, 280 (Miss 1987) (citing *Johnson v. State*, 154 Miss. 512, 122 So. 529 (1929). If the party fails to provide this support, we are not obligated to consider the assignment of error. *Drennan v. State*, 695 So 2d. 581, 585-86 (Miss. 1997) (citing Hoops v. State, 681 So. 2d 521, 526 (Miss. 1966). Thus, Mitchell has waived his argument on this issue.

Here, the appellant did not raise the issue relied upon by the dissent and cited no reasons or authority to support the argument. Accordingly, we find that it is waived and not properly before this Court. The only issues before this court on this appeal relate to the disqualification of the attorneys and the recusal of the chancellor.

¶. Certainly, we are concerned about allegations of abuse. The determination of whether abuse has occurred should be reviewed promptly. Here, there was a significant delay of over a year from the date the motion for modification was filed and the chancellor's final order. During this time, the child and his father were denied an opportunity to live together, and the child was in the custody of the Mississippi Department of Human Services. He was repeatedly moved between foster homes and the Baptist Children's Home. The Seriousness of these charges notwithstanding, the dissent's conclusion is based entirely on his sua sponte review of the entire record and independent research of issues that were neither raised nor briefed by the appellant. In 1929, Justice Griffith concluded:

It is a strange case upon which, in these tens of thousands of law books, no authority can be found, and when none is presented and the proposition that the authorities do not sustain the

proposition, else they would have been cited. The courts frequently speak of such unsupported propositions as having been waived because of the failure to properly present them. There are several reasons which make it necessary to give weight to the foregoing considerations, one of which is that no Supreme Court could ever keep up with its docket if the judges were put to the task of briefing those cases of which the parties themselves have thought too little to brief.Johnson v. State, 122 So. 529, 529 (Miss. 1929). With the tremendous number of "law books" added to our jurisprudence since Justice Griffith arrived at this insightful conclusion, we believe it remains true today more than seventy-five years later.

Based on these reasons, we affirm the decision of the chancellor.

THE JUDGMENT OF THE YAZOO COUNTY CHANCERY COURT IS AFFIRMED. THE COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

BRIDGES, P.J., MYERS, CHANDLER AND ISHEE, JJ, CONCUR. IRVING, J. CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY KING, C.J., LEE, P.J. AND BARNES,J.

IRVING, J. CONCURRING IN PART AND DIDSSENTING IN PART:

¶. I agree with the majority that the chancellor did not err in disqualifying Ceola James

as counsel for J.N.W.E. and in not disqualifying Derek Parker as counsel for W.D.W. However, I cannot agree that this Court should ever affirm a judgment of a chancellor which has the effect of dismissing with prejudice an allegation of sexual abuse of a child in the absence of a finding that the allegation of sexual abuse is without merit. Yet, this is exactly what the majority has done in this case. Therefore, I respectfully dissent from that portion of the modification request was without merit.

¶In an attempt to justify its actions, the majority makes the following statement: "Certainly our preference would be that any sexual abuse charges be heard and resolved. However, we look at the appellant's argument and do not see this as an issue to be considered on appeal." The majority then proceeds to try to bolster its view - that the issue of the trial court's abuse of discretion in dismissing J.N.W.E.,s complaint for modification (which is premised on the allegation that the custodial father has sexually abused the child) - is not justicable in this appeal. In that effort, the majority quotes the following statement made by the presiding judge during oral argument:

¶. It is elementary that the issues on appeal are determined by the parties as reflected in their brief. M.R.A.P., Rule 28. Therefore, the only thing that the presiding judge could have been

attempting to accomplish by his admonition to the parties was to prevent the parties from publicly delving into the factual allegations of the sexual abuse claim during their argument since these allegations involved a minor child. He may have improvidently used broad language to accomplish that end, but assuming, as apparently does the majority, that the presiding judge was attempting to limit the issues, as opposed to attempting to prevent the parties from stating allegations of the fact surrounding the sexual abuse claim, he was without authority to do so, as Rule 28 of the Rules of Appellate Procedure clearly gives parties the right to define the issues which they desire to be considered on appeal.

¶. As stated, the majority also finds that J.N.W.E. did not raise and argue in her brief the issue of the dismissal of her complaint. A review of J.N.W.E. assigned issues and brief argument negates such a narrow construction of the issues. In her brief, J.N.W.E. lists the following issues which we recite verbatim:

1. Should the Motion for Recusal have been granted?

2. Should the Appellant's attorney have been removed?

3. Should the Appellee's attorney have been

removed?

4. Did the judge of the lower court abuse her discretionary power?

¶. In a section of J.N.W. E's brief entitled, "Summary of Trial Relevant to Issues Presented for Review." J.N.W.E. states, the Appellant and the Appellee have never been heard on the issue of custody. Appellant wanted to be heard and still desires to be heard. The Appellee was given custody by default." It is true, as the majority asserts, that in the argument portion of her brief under issue number four, J.N.W.E. only makes one paragraph of argument. The majority correctly quotes the entire paragraph. However, in that paragraph, J.N.W.E. stated that Appellant believed (sic) that the Chancellor further abused her discretion when the Appellant was only given ten (10) days to hire an Attorney (sic) after which Appellant's case was dismissed with prejudice."

¶. While J.N.W.E.. may not have done a good job in briefing the issues, that could be said of many briefs that this Court receives. What is important here is not whether the issue of the dismissal of the motion for modification without a hearing on the abuse allegation was adequately briefed or even raised but whether it is proper for this Court to ignore this issue when the record before us clearly reveals that neither the Youth

court of Yazoo County nor the Chancery court of Yazoo county ever adjudicated the issue.

¶. Even assuming (1) that the issue was not properly raised and briefed, and (2) that James could not raise the issue in the brief which she filed on behalf of J.N.W.E. because James had been disqualified form representing J.N.W.E., should we decide that an allegation as serious as sexual child abuse should be waived because of the failure or inability of the appealing party to raise the issue? I think not. Rule 28 (a) (3) of the Rules of Appellate Procedure authorizes us to "notice a plain error not identified or distinctly specified" in the briefs. I believe that the dismissal of the motion for modification and the return of the minor child to the father in the absence of an adjudication on the merits of the sexual abuse allegation is a plain error which we should notice here if we truly think that the issue was not raised by J.N.W.E. In that regard, if the majority really prefers that sexual child abuse claims be heard and resolved, it needs to explain why it refuses to make use of the authority granted by Rule 28 (a) 3) of the Mississippi Rules of Appellate Procedure.

¶. J.N.W.E. filed her original motion for modification of custody on February 21, 2003. Before process was served on W.D.W.E. on the motion for modification, J.N.W.E. charged W.D.W. with sexual abuse of the minor child of the parties,

and the Yazoo County Youth court removed the minor child from W.D.W.'s custody and placed the child with the Department of Human Services pending the outcome of the investigation of the sexual abuse allegations. (fn4) On October 13, 2003, the Yazoo county Youth court transferred the case to the chancery court without making a finding on the allegation of sexual abuse. The Yazoo county Youth Court Order provided that custody of the minor child would remain with the Department of Human Services pending resolution of the matter in the Chancery Court of Yazoo county.

¶. In dismissing J.N.W.E.'s motion for modification, the chancellor found that the case had remained on the docket since October 5, 2003, with no attempt by J.N.W.E. to obtain a setting for a hearing. The October 5 date is inexplicable inasmuch as the case was transferred to the chancery court on October 13. In any event, the chancellor noted that the custody of the minor child had been with the Department of Human Services during the interim period and that the child had been shuffled back and forth between foster homes and the Baptist Children's Village during that time. After noting that the child had been separated from his custodial parent during all of this time, the chancellor stated:

> Due to persistent failure of (J.N.W.E.) to move forward with the prosecution of this matter, or to obtain new counsel as directed by the court, the court is left with no choice, but to dismiss this matter and to return the custody of (the minor child) to W.D.W., his father and custodial parent.

¶. I appreciate the chancellor's concern for a speedy resolution of the custody issue. However, I cannot agree with the ultimate solution+ fashioned by the chancellor, and approved by the majority, to accomplish this goal. Dismissing J.N.W.E.'s motion for modification and returning custody of the minor child to the custodial father, without determining if there was any merit to the abuse allegation, was not the proper solution to address the delay occasioned by what the chancellor perceived as a lack of diligence on J.N.W.E.'S part in pursuing the matter. (fn5) As I understand the facts, the Youth Court of Yazoo County did not determine that the abuse allegations were frivolous. In fact, that court did not determine the merits of the allegations at all: it simply transferred the case to the Chancery Court of Yazoo County for a resolution of the matter. However, after the case was returned to the Chancery court of Yazoo County, the chancellor did not adjudicate the allegations of the sexual abuse claim.

`¶. In order to bring a speedy resolution to the claim that the minor child had been sexually abused by his father, the chancellor could have appointed a guardian ad litem to protect the interests of the minor child. The chancellor also could have directed the Department of Human Services to conduct an investigation of the abuse allegations, assuming it has not already done so. I note, however, that if such an investigation was done, no reference was made to it in the chancellor's order dismissing the motion for modification and no such investigative report is contained in the record before us. After receiving these reports, the chancellor then could have determined whether it was in the best interest of the minor child to return his custody to the father.

¶. I make one additional point. As already pointed out, the chancellor dismissed J.N.W.E.'s complaint because J.N.W.E. did not acquire an attorney within ten days of James' being disqualified. While it is certainly desirable to always have trained counsel present issues to the court and assist in the trial of these issues, we must not lose sight of the fact that in our system of justice, a party always has the right to represent himself, subject of course to the same rules and procedures that govern attorneys who represent litigants. Therefore, I would find that the basis given by the chancellor for dismissing J.N.W.E.'s complaint (J.N.W.E.'s failure to hire an attorney

within ten days) was not a valid basis for not going forward and considering on the merits the claim that the custodial father had sexually abused the child.

¶. I would reverse and remand for a hearing on the merits of the allegations that the child has been sexually abused by the father. My view that the case should be reversed and remanded for a hearing should not be construed in any way to suggest that I think there is no merit to the allegations. I have no way of knowing; I simply believe that since the best interest of the child is always the polestar consideration in child custody matters, the chancellor at least should have caused an investigation to be made and then based her custodial decision on the child's best interest in light of what the investigative report did or did not reveal concerning the sexual abuse claim.

KING, C.J. LEE, P.J. AND BARNES, J., JOIN THIS SEPARATE WRITTEN OPINION

Footnotes:

1. Initials have been substituted for the parties' names to protect the identity of the minor child.

2. The Judgment of divorce is not contained in the record before us. However we are able to ascertain from other documents in the record that custody was in fact

granted to W.D.W. and that the date of filing of the complaint for divorce was July 30, 2001.

3. As a result of the chancellor's disqualifying James, J.N.W.E. represented herself in presenting the motion to disqualify Parker which was filed by James.

4. The order from the Yazoo County Youth Court is not contained in the record before us. The facts concerning what transpired in the youth court, as well as facts regarding the abuse allegations, are taken from the chancellor's order dismissing J.N.W.E.'s motion for modification.

5. Before being disqualified, James, as counsel for J.N.W. E., insisted he attempted numerous times without success to get W.D.W.'s counsel to agree to a trial setting.

Constitutional Provisions Asserted in the Lower Court (Excerpts from Motion)

IN THE SUPREME COURT OF MISSISSIPPI

CEOLA JAMES ***APPELLANT***

V. ***NO. 2005-BA-01622-SCT***

THE MISSISSIPPI BAR ***APPELLEE***

MOTION FOR REHEARING

COMES NOW, Ceola James, pursuant to Rule, 40, M.R.C.P., and files this Motion for Rehearing, and as cause, would state the following:

CASE OF FIRST IMPRESSION: This case presents a matter on appeal that has not been previously decided by this court. A temporary collateral *Order for Protection from Domestic Abuse* was made by the Appellant while sitting as a Ninth District Chancery Judge in Washington county staying the temporary agreement that the parties had made until they could be heard by the Yazoo County Chancellor, then Judge Gail Shaw-Pierson. The agreement was executed by the parties on January 31, 2000, and on November 21, 2001. The parties wanted to fight to break the

agreement. At that time, the minor child appeared to be living in Greenville. It was the Appellant's duty to do a protective order, since no justice court judge or other judge would answer the call of duty. The Appellant personally presided over the parties. The Appellant is contending that she did not substantially participate in the divorce case in Yazoo city because Appellant had no jurisdiction over the divorce, and could not enter an order affecting the merits of the divorce. M.R.A.P., Rule 40 (a) provides that the Motion for Rehearing should be used to call attention to specific *errors of law or fact* which, the opinion is thought to contain; Appellant will limit her arguments to these two factors:

1. <u>ERRORS OF FACT</u>

Appellant has been cited for a public reprimand, but Appellant is an **innocent party.** Appellant appealed a case in order to be able to represent the parties. Appellant has brought the relevant facts before this court. The proper manner to get a removal petition resolved is through an appeal. Appellant has never filed a bar complaint against either a judge or an attorney. Communication has always resolved any situation that Appellant has had with any member of the bar. This court has overlooked the fact that Appellant had a **legitimate question** that needed to be answered. If Appellant had been Chancellor in Yazoo city and had presided over the divorce,

Appellant would have readily withdrawn because the Mississippi Bar has already addressed that issue....The facts in this case and the way the Appellant was treated is a source of embarrassment. The unusual practices that occurred in Yazoo city are too long to be enumerated. This court may never believe me, but I am an **innocent party.** This case is about **rich v. poor**, as I told the Court of Appeals on oral argument before the court. If the court will allow me to repeat myself on one issue, an attorney who represents the poor needs the support of both the bar and the Supreme Court, so an attorney who wants to help will not be railroaded into a bar complaint. No attorney should have to suffer abuse in order to represent the poor. This court has set up the Mississippi Access to Justice Commission. This court should allow this committee to review this opinion from the standpoint of attempting to represent the poor. The errors of fact is that the court should consider that the facts in Appellant's case present a legitimate issue for appeal. Appellant **withdrew form the case after the case had been appealed,** but Appellant was forced to fight a bar complaint during the time of appeal. This has created a hardship for the Appellant..... The findings of fact by this court indicate that the protective order was "**interwined**" with the divorce. Any fight could possibly be interwined with a

divorce.[1] In the case before the court, the agreement was dismissed as insignificant prior to the divorce.[2]

2. ERRORS OF LAW

This court has jurisdiction over bar complaints, and can make or change any law or make any modificatiion it deems proper for the administration of justice or to improve the administration of justice.

Appellant made a good faith effort to request a ruling. This ruling will complicate appealing a removal petition even when the attorney has not represented the party because attorneys will feel that they will become a test case for a bar complaint even if they are **appealing for permission to represent a party**. There is a distinction between a party who represents a client and appeals after he receives a complaint and one who appeals to get the matter resolved. If two attorneys appeal a removal, and one is given a bar complaint during appeal, this sends the wrong message to the public. ...The court of appeals

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[1]"Interwined" has nothing to do with affecting the merits of the divorce.

[2]The fight in the protective order had nothing to do with the divorce.

ruled that Derek Parker should have been removed, but the court concluded by saying that since they were not the judge of the lower court, they would not remove Mr. Parker... The "substantial interwined" test is so subjective that it will not give proper notice of what the court expects. Mississippi adopted the ABA Rules of Professional Conduct. These rules are based on federal law which requires that there be a ruling "affecting the merits of the case." The comments to M.R.P.C. 1.12 also states that a (former) judge can not make a ruling "affects the merits."

Appellant believes that the opposing counsel used language to inflame the court and to mislead the court into making bad law. The decisions and opinions that this court has previously made all comply with ABA rules. They all prohibit a judge from working on a case as an attorney if he made a ruling as a judge that "affects the merits" of a case unless the parties agreed. The Appellant did not make a ruling affecting the merits of the Yazoo County divorce, and even if the court does not agree with the ruling, it did not affect the merits....The " substantial interwined test" will nullify the "substantial participation" test... **Substantial interwined** is a subjective test, and it will lead to **due process** and **equal protection** problems such as we have in this case. Substantial interwined is whatever the judge says it is without having an objective criteria. Substantial participation is an objective standard that requires a judge to make

an order "affecting the merits." This rule was designed to exclude judges who did not participate in the "**case in controversy.**".....

CONCLUSION

In conclusion, the Appellant prays that this Motion be received and filed, and that upon a hearing of said Motion for Rehearing, the Court will grant the following relief:

1. That the court will consider not adopting the "substantial interwined" test, and will keep the "substantial participation test" (as announced by ABA Rules and adopted by Mississippi), because the substantial interwined test does not afford a prior judge due process because it is too vague, and it will cause equal protection and due process problems, in particular with attorneys who are poor or represent the poor.....

2. That this court will reverse the public reprimand because Appellant was appealing for permission to represent a party.....

3. Appellant also prays for general relief.

/S/
Ceola James 2-15-2007

Order Granting Stay Pending Appl. for Writ

IN THE SUPREME COURT OF MISSISSIPPI

No. 2005-BA-01622-SCT

CEOLA JAMES ***Appellant***

v.

THE MISSISSIPPI BAR ***Appellee***

ORDER

This matter is before the undersigned Justice on the Motion for Stay of Public Reprimand Pending Application for Writ of Certiorari filed by Appellant. Appellant asks that this court stay the public reprimand in this case pending her application for writ of certiorari to the United States Supreme Court. After due consideration the undersigned Justice finds that the motion is well taken and should be granted.

IT IS THEREFORE ORDERED that the Motion for Stay of Public Reprimand Pending for Writ of Certiorari filed by the Appellant is granted. The public reprimand is stayed until August 2, 2007.

SO ORDERED, this the 4th day of May, 2007.

/S/
OLIVER E. DIAZ, JR., PRESIDING JUSTICE

IN THE SUPREME COURT OF MISSISSIPP1

NO. 2005-BA-01622-SCT

CEOLA JAMES

V.

THE MISSISSIPPI BAR

DATE OF JUDGMENT: 07/28/2005
ATTORNEY FOR APPELLANT: CEOLA JAMES
(PRO SE)

ATTORNEY FOR APPELLEE: JAMES RUSSELL CLARK
ADAM BRADLEY
KILGORE
GWEN COMBS

MANDATE ISSUED:

NATURE OF CASE: CIVIL - BAR MATTERS

DISPOSITION: PUBLIC REPRIMAND - 01-18-07*

MOTION FOR REHEARING FILED:

EN BANC.

DIAZ, JUSTICE FOR THE COURT

¶1. In this attorney discipline case we are asked whether a former judge may represent a party in a

* No separate order was entered in January, 2007 for the public reprimand that became final in January, 2007

case related to one over which she formerly presided because the Rules of Professional conduct squarely prohibit such a situation, we hold that she may not.

FACTS AND PROCEDURAL HISTORY

¶2. Unusually, the factual situation underlying this case has already been examined and ruled upon by our appellate court. See **J.N.W.E.** v. **W.D.W.**, 922 So. 2d ,12 (Miss. Ct. App. 2005), *cert. denied* 926 So. 2d 922 (Miss. Ct. App. 2006)[1] The facts are undisputed. Attorney Ceola James served as a Chancellor in the Ninth Chancery District, which is composed of Humphreys, Issaquena, Sunflower, Warren, and Washington Counties. The case of **J.N.W.E. v. W.D.W.**, which triggered the complaint at hand, arose in the Chancery court of Washington County, where Ms. James was Chancellor.

¶3. Styled a "Petition for Protection from Domestic Abuse," **J.N.W.E.** was brought by a mother seeking court-ordered protection for her child, who had allegedly been physically abused by her husband, W.D.W. The couple was in the process of a divorce action situated in Yazoo County.
¶4. **J.N.W.E.** moved the court for a protective order

[1]The court of Appeals saw fit to seat the names of the parties because the interests of a child were at stake; we will similarly refrain from identifying them.

that would prevent her husband, W.D.W. from visiting with their child, alleging that the child was subject to physical harm by the father. At an emergency hearing on November 2001, the court heard testimony from multiple witnesses and a statement allegedly signed by the defendant was introduced as evidence. Based upon the testimony and evidence presented, Ms. James entered an order staying any unsupervised visitation by the child's father on that same day.

¶5. On December 14, 2001, Ms. James held a final hearing on the issue in which the defendant appeared and acknowledged he had indeed signed the statement previously admitted as evidence, while contesting that he had actually done the acts portrayed in the statement. After this hearing, Ms. James entered another order on January 23, 2002 extending the previous order and barring W.D.W. from any unsupervised visitation with the child. This order was to extend until the final disposition of the divorce case in Yazoo County, the trial of which was to begin the next day, on January 24.

¶6. On June 20, 2002, a final judgment of divorce was entered in Yazoo County. Over a year later, on November 24, 2004, an ex parte order was entered substituting Ms. James as counsel of record for J.N.W.E. in the Yazoo County divorce action.

Opposing counsel quickly filed a Motion to disqualify Ms. James as attorney of record, citing her previous involvement in the related child abuse case and the prohibition set forth in Mississippi Rule of Professional Conduct 1.12. After the failure of Ms. James to respond to the Motion or appear at the hearing, the trial court disqualified her as J.N.W.E.'s attorney.

¶7. Ms. James responded with a motion to reconsider that ruling, arguing that she did not receive proper notice regarding the motion to disqualify, and also filed a motion to disqualify the attorney of W.D.W., and a motion for recusal against the trial judge. The trial judge set aside the original order to disqualify Ms. James and allowed a hearing on the merits.

¶8. After this hearing, the trial judge found again that Ms. James had violated Rule 1.12, and, accordingly, could not represent J.N.W.E. The court also denied the motions for disqualification of attorney and recusal filed by Ms. James, finding that they had no merit.

¶9. Ms James then appealed to this Court to review the decision of the trial court. We assigned the case to our Court of Appeals, but notified the Mississippi Bar of the possible violation of Rule 1.12. As noted, *supra*, the Court of Appeals

found that the trial court was correct in disqualifying Ms, James as of record for J.N.W.E. because of the Rule 1.12 conflict, and we denied certiorari to review that decision.

¶10. Concerned that a breach of ethics had occurred,the Bar notified the Committee on professional Responsibility, which investigated the alleged attorney misconduct. See M.R.D.7(a). The Committee found a violation of Rule 1.12 had occurred, and a public reprimand for violation of Rule 1.12 was issued to Ms. James on January 24, 2005.

¶11. Pursuant to M.R.D. 7(c), Ms James requested a formal proceeding to review the decision of the committee, and a three-member Complaint Tribunal convened for a trial of the matter on June 29, 2005. The Complaint Tribunal found-as had the Court of Appeals and the Committee on Professional Responsibility - that Ms James had violated Rule 1.12. It recommended a public reprimand as a penalty for the violation.

¶12. Ms. James appealed this decision, at which time the Bar filed a motion asking for damages, as the Bar considered the appeal frivolous. The Bar argued that because multiple bodies had found a violation of Rule 1.12 - including the trial court, the Court of Appeals, this Court by implication, as we denied certiorari; the

Committee on Professional Responsibility; and the Complaint Tribunal - Ms James' appeal was wholly frivolous.

¶13. We denied the motion, citing Rule 9 of the Rules of Discipline, which allow that the accused attorney may, *as a matter of right,* appeal any disposition of the Tribunal to the (Supreme) Court." (emphasis added). For even an attorney who admits that her conduct was a violation of our rules may still appeal "the extent or absence of discipline" assessed by the Complaint Tribunal. M.R.D. 9(a).

¶14. Ms James asks us to review twelve issues, and the Bar tells us there is but one. There are actually two: was there a violation of Rule 1.12? And, if so, is a public reprimand warranted? After a full review. we conclude there was a violation and that a public reprimand is warranted.

STANDARD OF REVIEW

¶15. This Court has exclusive jurisdiction over attorney discipline matters and is the ultimate judge in those proceedings. See Rule 1 (a) of the Rules of Discipline for the Mississippi State Bar; **Miss. Bar v. Inserra**, 855 So 2d 447, 450 (Miss. 2003). Accordingly, matters of attorney discipline are reviewed de novo. **Id.** We also apply a proportionality requirement to Bar discpline to insure the fairness of any penalty. **Miss Bar v.**

Drungole, 913 So. 2d 963, 967 (Miss. 2005). We will modify any punishment as needed to best serve the interests of the Bar and the public. **Parrish v. Miss Bar**, 691 So. 2d 904, 907 (Miss. 1996).

DISCUSSION

¶16. The Bar urges that this matter has already been fully adjudicated by the **J.N.W.E.** decision in our Court of Appeals, and indeed, the facts presented to us are the same. However, attorney discipline is not a matter to be taken lightly, and as noted *supra,* this Court has exclusive jurisdiction over it. Whether Ms. James should be disqualified due to Rule 1.12 was a component of the J.N.W.E. case but it was not reviewed as an ethical violation, as we do here.

The Rule.

¶17. Rule 1.12 (a) of the Mississippi Rules Professional Conduct states, in pertinent part, a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge." The Comment explains that the Rule is not excessively broad, as

The term 'personally and substantially' signifies that a judge who was a member of a multimember

court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits.

The rule's purpose is to safeguard the integrity of the legal profession in Mississippi. We have never before addressed the Rule in the context of attorney discipline, but we have in the context of judicial discipline. Miss. Comm.n on Judicial Performance v. Atkinson, 645 So. 2d 1331 (Miss, i994). In That case, we were faced with a municipal judge who presided over a bond hearing and established a bond for a criminal defendant, then later became an attorney for the defendant and attempted to have the same bond reduced. **id at** 1336.

Substantial Participation

¶18. In the case at hand, MS. James argues that unlike Atkinson she did not participate substantially

participate in the case.[2] "Substantial participation" is not as simple as a mathematical formula, although the extent of the judge's repeated participation should be assessed. The extent of the judge's interaction with the case with the case and the litigfations should be the primary focus of the inquiry.

¶19. The facts are undisputed that while acting as chancellor Ms. James entered three orders in the child abuse case in Washington County and presided over two hearings. The first hearing was apparently ex parte and not transcribed. The second hearing was transcribed and runs thirty-two pages, which does not include the argument of counsel, which were not transcribed. Ms. James questioned both attorneys about the case and specifically directed inquiries to W.D.W. about whether he had indeed abused his child or signed a statement admitting he had.

20. One of the orders crafted a temporary injunction against W.D.W. preventing him from having any unsupervised visitation with his child. Another converted this temporary injunction into a

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[2] Ms. James does not argue that she did not personally participate in the case, so we need not examine the Rule.

permanent one pending the outcome of the Yazoo County divorce case.

"Matter" Defined.

Ms. James further argues that even if she had participated substantially in the child abuse case, the Yazoo County Divorce case is not the same "matter" as contemplated by Rule 1.12. The cases were certainly situated in different counties and had different cause numbers, and the Bar does not contend Ms. James was originally involved in the Yazoo County case. The question turns on what "a matter" means as contemplated by Rule 1.12.

¶23. The comment to Rule 1.12 begins by noting that "(t)his Rule generally parallels Rule 1.11," which defines "'matter." Rule 1.11 (d) (1) sets forth that "the term 'matter' includes contract, claim, controversy, investigations, charge, accusation, arrest or other particular matter involving a specific party or parties."

Application to the Case at Hand.

¶24. Ms. James oversaw the Washington County child abuse petition, not the Yazoo County divorce action. However, the two cases were greatly

interwined. The parties, J.N.W.E. and W.D.W., are the same. The initial pleadings filed before Ms. James by J.N.W.E., styled a "Petition for Protection from Domestic Abuse," discusses the evolution of the divorce case in Yazoo County. It further reveals that the Yazoo County Chancery Court had ruled previously on the custody issue between J.N.W.E. and W.D.W.., which was the sole subject of the Washington County case. At the second hearing in the Washington County child abuse case, Ms James acknowledged that information regarding the alleged child abuse w(as) presented to the Yazoo Chancery Court."

¶25. It is also undisputed that any divorce action will include a discussion and ruling by the chancery court on custody of any children to the marriage. Ms. James ruled explicitly on the rights of W.D.W. to have visitation of his child. Custody and visitation are inextricably bound to the divorce action in Yazoo County where Ms. James later attempted to represent J.N.W.E.

¶26 While the two cases do not share the same docket number, they do involve the same parties, and the same concerns. As a Judge, Ms James personally and substantially participated in the Washington County child abuse action, which was focused exclusively on the visitation of the minor child.

¶27. Critically, Ms. James admits that she was hired by J.N.W.E. to obtain a modification of the Yazoo county Divorce order, specifically, a "modification so (J.N.W.E.) could get custody.[3] Custody of the minor child is exactly the matter Ms. James oversaw in the Washington county child abuse case.

¶28. Because she substantially participated in the custody matter as a judge. Ms James cannot now represent J.N.W.E. - nor for that matter, could she represent the father,W.D.W.[4] The only circumstance in which Ms, James could have represented "anyone in connection (in this) matter is if "all parties to the proceeding give informed consent confirmed in writing." "M.R.C.P. 1.12 (a): As signaled by this motion to disqualify, W.D.W. expressly did not consent to Ms, James representing his ex wife, J.N.W.E.

The Discipline Imposed.

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[3] Although the documents are not in the record, Ms. James testified that W.D.W. was ultimately granted custody of the minor child in the Yazoo County divorce action.

[4] A similar conclusion was reached by the Mississippi Bar in Ethics Opinion No. 226, rendered April 6, 1995. There, the Bar concluded "That a former chancellor may not later represent parties in proceedings for contempt or modification of decrees and judgments which were rendered in the case by the former chancellor."

¶29. "Our primary concern when imposing sanctions for attorney misconduct is that the punishment be sufficient to vindicate the overall reputation of the bar in the public eye." **Goeldner v. Miss. Bar**, 891 So. 2d 130, 135 (Miss. 2004). "while we are free to evaluate the discipline the Bar has imposed and modify that punishment as best needed to serve the best interest of the Bar and the public, we consider a set of nine criteria" in assessing punishment, **Id. at 135.** They are:

(1) the nature of the conduct involved;
(2) the need to deter similar misconduct;
(3) the preservation of the dignity and reputation of the profession;
(4) the protection of the public;
(5) the sanctions imposed in similar cases;
(6) the duty violated;
(7) the lawyer's mental state:
(8) the actual or potential injury caused by the lawyer's misconduct; and
(9) the existence of aggravating or mitigating circumstances.

Id.

30. Ms James has violated Rule 1.12, which is designed to preserve the integrity of the legal system from real or potential conflict of interest.

There is a compelling need to deter members of the Bench and Bar from this type of conduct and the protect the public from this type of behavior. The comment to Rule 1.11 is illustrative in this respect, as enforcement of that rule as well as 1.12, "prevents a lawyer from exploiting public office for the advantage of a private client." At all times we must protect the public from these types of conflict of interest.

¶31. In terms of mitigation, we may contemplate the previous performance of a lawyer and whether they have any prior infractions. ***Goeldner***, 891 So. 2d at 135. Ms. James has been a member of the bar for 29 years, and the record shows that the Bar has never instituted disciplinary proceedings against her before. She has repeatedly testified and argued that she wished to become counsel of record for J.N.W.E. in order to help the minor child, and we cannot impugn that honorable impulse. While we are reluctant to discipline longstanding members of the bar with no history of infractions, we cannot ignore the conduct that has triggered the case at hand, especially in light of the plain language of 1.12.

¶32. The Bar suggests that Ms. James receive a public reprimand as the sole punishment because of her violation of Rule 1.12, which was the

punishment assessed against Judge Atkinson for a similar violation 645 So 2d. at 1337. In light of the foregoing, this is not an excessive punishment.

CONCLUSION

¶ 33. In order to protect the integrity of our profession, our Rules of Professional Conduct specifically prohibit attorneys who are former judges from later representing anyone in a matter in which they personally and substantially participated as a judge. Because Ms. James violated this prohibition, she must be publicly reprimanded.

¶34. CEOLA JAMES SHALL BE PUBLICLY REPRIMANDED IN OPEN COURT BY THE PRESIDING JUDGE ON THE FIRST DAY OF THE NEXT TERM OF THE WARREN COUNTY CIRCUIT COURT.

COBB, P. J., CARLSON, DICKINSON AND RANDOLPH, J.J. CONCUR. EASLEY, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY SMITH, C.J. RANDOLPH,J., JOINS IN PART. WALLER, P.J. AND WALLER, P. J. AND GRAVES, J., NOT PARTICIPATING

EASLEY, JUSTICE, CONCURRING IN PART AND DISSENTING IN PART:

¶35. While I concur with the majority that the disciplinary necessary, I respectfully dissent from the majority's imposition of only a public reprimand. I believe this Court should impose additional discipline on James. The Bar requested $69.17 for costs and expenses, including costs incurred in the investigation of this action. James claims that she already paid these costs. Notwithstanding James's assertions, the record reflects no documentation or other evidence of this payment. Therefore, I believe that the Bar is entitled to $69.17, or, in the alternative, the Bar should be provided proof of payment of these costs by James.

¶36. Additionally, I believe that James' conduct was so egregious that this Court should impose a ninety-day suspension. See M.R.D. 8 (b)(iii). As a former judge, James handled a matter involving the same parties. Once she became a practicing lawyer, James chose to represent one of the parties that had appeared before her in her capacity as a judge. The trial court disqualified James and found that her actions involving the same two parties and the same subject matter was a violation of M.R.P.C. 1.12 ***J.N.W.E. V. W.D.W.***, 922 s. 2D 12, 15 (Miss. Ct.. App.. 2005), *cert. denied*, 926 so. 2*d* 922 (Miss. 2006). The court of appeals affirmed the trial and held:

Based on these facts, we find that James' participation in the litigation between the parties, as chancellor, was substantial, and thus she was properly disqualified under Rule 1.12 of the rules of Professional conduct from representing J.N.W.E. in her ongoing battle with W.D.W. over the custody of the parties' minor child. Therefore, we affirm the chancellor's decision disqualifying James as J. N.W. E.'s attorney.

JN.W.E., 922 So. 2d at 16.

¶37. James's representation of this party unequivocally violated the Rule of Professional Conduct 1.12. There is no doubt that James, as a former judge and now an attorney, should have been keenly aware of this conflict. The principle that a lawyer should not represent anyone in a matter in which he or she substantially participated in his or her capacity as a judge is elementary. For the above reasons, I conclude that the Bar is entitled to payment in the amount of $69.17 and, I would impose a ninety-day suspension.

SMITH,C.J. JOINS THIS OPINION. RANDOLPH.PH., JOINS THIS OPINION IN PART..

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April 5, 2007

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 5th day of April, 2007.

Supreme Court Case # 2005-BA-01622-SCT
Trial Case # 2005-B-411

Ceola James v. The Mississippi Bar

Motion for Rehearing filed by Ceola James is denied. Waller, P.J., and Graves, J., not participating.

NOTICE TO CHANCERY/CIRCUIT COURT CLERKS
If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

IN THE SUPREME COURT OF MISSISSIPPI
NO. 2005-BA-01622-SCT

CEOLA JAMES ***Appellant***

vs

THE MISSISSIPPI BAR ***Appellee***

ORDER

This matter is before the undersigned Justice on the Motion to Amend or Correct the Final Order of the Court by the Appellant. Appellant asks that court vacate the pubic reprimand issued against the Appellant. After due consideration the undersigned justice finds that the Motion to Amend or Correct the Final Order of the Court is not well taken and should be denied.

IT IS FURTHER ORDERED that the Motion to Amend or Correct the Final Order is not well taken and should be denied.

SO ORDERED, this the 2nd day of May 2007.

/S/
OLIVER E. DIAZ, JR., Presiding JUSTICE

Serial: **145055**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2005-BA-01622-SCT

FILED
JAN. 11 2008

CEOLA JAMES **APPELLANT**

V.

THE MISSISSIPPI BAR **APPELLEE**

ORDER

This matter is befoe the undersigned Justice on the Motion for Relief under Rule 60, MRCP filed by Appellant, the Response filed by Alppellee and the Reply filed by Appellant. Appellant's public reprimand was affirmed by this court in January 2007. Appellant's Motion for Rehearing was denied by this Court in April 2007. Appellant asks once again for reconsideration of this court's decision. After due consideration the undersigned Justice finds that the Motion for Relief Under Rule 60, MRCP is not well taken and should be denied.

IT IS THEREFORE ORDERED that the Motion for Relief Under Rule 60, MRCP filed by Appellant is denied.

SO ORDERED, that the Motion for Relief Under Rule 60, MRCP filed by Appellant is denied.

SO ORDERED, this the 11th day of January, 2008.

/S/
OLIVER E. DIAZ, JR., PRESIDING JUSTICE